

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TROY J. ANDERSON,

No. C 10-05557 CW (PR)

Plaintiff,

ORDER OF DISMISSAL;
GRANTING LEAVE TO PROCEED
IN FORMA PAUPERIS

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,
et al.,

Defendants.

_____ /

Troy J. Anderson is incarcerated at the Martinez Detention Facility. At the time he filed the instant action, he had not been convicted and was involved in ongoing state criminal proceedings. Although Anderson did not designate this action as either a civil rights action or a habeas corpus petition, it was filed by the clerk as a civil rights action. Because the type of relief Anderson seeks, however, pertains to the legality of his ongoing criminal proceedings, the Court construes Anderson's pleadings as a petition for a writ of habeas corpus. See Skinner v. Switzer, 131 S. Ct. 1289, 1293 (2011)(to the extent a prisoner maintains he is entitled to "immediate or speedier release" from confinement, such a claim may be asserted only in a petition for a writ of habeas corpus).

Anderson's allegations are not easy to decipher, but he appears to claim that his arrest was unlawful, the prosecution and police department are withholding exculpatory evidence from him and the judge presiding over his criminal proceedings has not allowed

1 him to represent himself adequately in propria persona. He does
2 not state that he has raised his claim in any other court, and asks
3 this Court to intervene in his ongoing state proceedings.

4 This Court has authority to entertain a petition for a writ of
5 habeas corpus by a person in custody, but not yet convicted or
6 sentenced. See McNeely v. Blanas, 336 F.3d 822, 824 n.1 (9th Cir.
7 2003); Application of Floyd, 413 F. Supp. 574, 576 (D. Nev. 1976).
8 Such a person is not in custody "pursuant to the judgment of a
9 state court," 28 U.S.C. § 2254, and therefore brings his petition
10 under 28 U.S.C. § 2241(c)(3). McNeely, 336 F.3d at 824 n.1.

11 Although there is no exhaustion requirement for a petition brought
12 under 28 U.S.C. § 2241(c)(3), principles of federalism and comity
13 require that this Court abstain until all state criminal
14 proceedings are completed and the petitioner exhausts available
15 judicial state remedies, unless special circumstances warranting
16 federal intervention prior to a state criminal trial can be found.
17 See Carden v. Montana, 626 F.2d 82, 83-84 & n.1 (9th Cir.), cert.
18 denied, 449 U.S. 1014 (1980); see also United States ex rel.
19 Goodman v. Kehl, 456 F.2d 863, 869 (2d Cir. 1972) (pretrial
20 detainees must first exhaust state remedies).

21 Here, Anderson alleges no special circumstances warranting
22 this Court's intervention in his ongoing state proceedings. Each
23 of his claims is amenable to state court review through available
24 state procedures. Accordingly, the Court must abstain from
25 addressing the instant petition until Anderson's state criminal
26 proceedings are concluded.

27 Additionally, to the extent Anderson's pleadings attempt to
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1 raise a claim for damages based on the alleged violations that form
2 the basis of his request for habeas relief, no such claim is
3 available to him at this time.

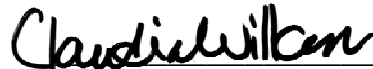
4 In Heck v. Humphrey, 512 U.S. 477, 486-87 (1994), the United
5 States Supreme Court held that in order to state a claim for
6 damages for an allegedly unconstitutional conviction or term of
7 imprisonment, or for other harm caused by actions whose
8 unlawfulness would render a conviction or sentence invalid, an
9 individual asserting a violation of 42 U.S.C. § 1983 must prove
10 that the conviction or sentence has been reversed or declared
11 invalid. See id. at 486-87. A claim for damages bearing such
12 relationship to a conviction or sentence that has not been so
13 invalidated is not cognizable under § 1983. Id. at 487. Although
14 a claim for damages will not be barred under Heck if the plaintiff
15 has not yet been convicted, such claim should not go forward if
16 criminal proceedings are still pending. See Wallace v. Kato, 127
17 S. Ct. 1091, 1098 (2007). Accordingly, Anderson cannot seek
18 damages for alleged violations pertaining to his conviction unless
19 and until he is convicted and subsequently has his conviction set
20 aside.

21 For the foregoing reasons, the instant action is DISMISSED
22 without prejudice to Anderson's filing a federal habeas petition
23 challenging the validity of his conviction once he has exhausted
24 state remedies, and filing a civil rights action for damages in
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1 accordance with Heck v. Humphrey.¹ Leave to proceed in forma
2 pauperis is GRANTED (Docket no. 13). The Clerk of Court shall
3 enter judgment and close the file.

4 IT IS SO ORDERED.

5 DATED: 8/10/2011



6 CLAUDIA WILKEN

7 United States District Judge
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24 ¹Individuals in state custody who wish to challenge in federal
25 habeas proceedings either the fact or length of their confinement
26 are first required to exhaust state judicial remedies by presenting
27 the highest state court available with a fair opportunity to rule
28 on the merits of each and every claim they seek to raise in federal
court. See 28 U.S.C. § 2254(b), (c)); Rose v. Lundy, 455 U.S. 509,
515-16 (1982).

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ANDERSON et al,

Case Number: CV10-05557 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

DEPARTMENT OF CORRECTIONS AND
REHABILITATION et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 10, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Troy J. Anderson
MDF
CC10CL83N
901 Court Street
Martinez, CA 94553

Dated: August 10, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

United States District Court
For the Northern District of California